

PART 211—MISSION COMPATIBILITY EVALUATION PROCESS

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AUTHORITY: Public Law 111-383, Section 358, as amended by Public Law 112-81, Section 331.

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Subpart A—General

§211.1 Purpose.

This part prescribes procedures pursuant to section 358 of the Ike Skelton National Defense Authorization Act for Fiscal Year 2011 to provide:

(a) A formal review of projects for which applications are filed with the Secretary of Transportation under 49 U.S.C. 44718, to determine if they pose an unacceptable risk to the national security of the United States.

(b) An informal review of a renewable energy development or other energy project in advance of the filing of an application with the Secretary of Transportation under 49 U.S.C. 44718.

§211.2 Applicability.

This part applies to:

(a) The Office of the Secretary of Defense, the Military Departments, the

Chairman of the Joint Chiefs of Staff and the Joint Staff, the Combatant Commands, the Office of the Inspector General of the Department of Defense, the Defense Agencies, the DoD Field Activities, and all other organizational entities in the Department of Defense (hereafter referred to collectively as the “DoD Components”).

(b) Persons filing applications with the Secretary of Transportation for proposed projects pursuant to 49 U.S.C. 44718, when such applications are received by the Department of Defense from the Secretary of Transportation.

(c) A State, Indian tribal, or local official, a landowner, or a developer of a renewable energy development or other energy project seeking a review of such project by DoD.

(d) Members of the general public from whom comments are received on notices of actions being taken by the Department of Defense under this part.

(e) The United States.

§211.3 Definitions.

Adverse impact on military operations and readiness. Any adverse impact upon military operations and readiness, including flight operations research, development, testing, and evaluation and training, that is demonstrable and is likely to impair or degrade the ability of the armed forces to perform their warfighting missions.

Applicant. An entity filing an application with the Secretary of Transportation pursuant to 49 U.S.C. 44718, and whose proper application has been provided by the Secretary of Transportation to the Clearinghouse.

Armed forces. This term has the same meaning as provided in 10 U.S.C. 101(a)(4) but does not include the Coast Guard.

Clearinghouse. The DoD Siting Clearinghouse, established under the Deputy Under Secretary of Defense (Installations & Environment).

Congressional defense committees. The—

(1) Committee on Armed Services and the Committee on Appropriations of the Senate; and

(2) Committee on Armed Services and the Committee on Appropriations of the House of Representatives.

Office of the Secretary of Defense

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Days. All days are calendar days but do not include Federal holidays.

Landowner. A person, partnership, corporation, or other legal entity, that owns a fee interest in real property on which a proposed project is planned to be located.

Military readiness. Includes any training or operation that could be related to combat readiness, including testing and evaluation activities.

Mitigation. Actions taken by either or both the DoD or the applicant to ensure that a project does not create an unacceptable risk to the national security of the United States.

Proposed project. A proposed project is the project as described in the application submitted to the Secretary of Transportation pursuant to 49 U.S.C. 44718 and transmitted by the Secretary of Transportation to the Clearinghouse.

Requester. A developer of a renewable energy development or other energy project, a State, Indian tribal, or local official, or a landowner seeking an informal review by the DoD of a project.

Section 358. Section 358 of the Ike Skelton National Defense Authorization Act for Fiscal Year 2011, Public Law 111-383.

Unacceptable risk to the national security of the United States. The construction, alteration, establishment, or expansion, or the proposed construction, alteration, establishment, or expansion, of a structure or sanitary landfill that would:

(1) Endanger safety in air commerce, related to the activities of the DoD.

(2) Interfere with the efficient use and preservation of the navigable airspace and of airport traffic capacity at public-use airports, related to the activities of the DoD.

(3) Significantly impair or degrade the capability of the DoD to conduct training, research, development, testing, and evaluation, and operations or to maintain military readiness.

United States. The several States, the District of Columbia, the Commonwealths of Puerto Rico and the Northern Mariana Islands, American Samoa, Guam, Midway and Wake Islands, the U.S. Virgin Islands, any other territory or possession of the United States, and associated navigable waters, contig-

uous zones, and territorial seas and the airspace of those areas.

Subpart B—Policy

§211.4 Policy.

(a) It is an objective of the Department of Defense to ensure that the robust development of renewable energy sources and the increased resiliency of the commercial electrical grid may move forward in the United States, while minimizing or mitigating any adverse impacts on military operations and readiness.

(b) The participation of the DoD in the process of the Federal Aviation Administration conducted pursuant to 49 U.S.C. 44718 shall be conducted in accordance with this part. No other process shall be used by a DoD Component.

(c) Nothing in this part shall be construed as affecting the authority of the Secretary of Transportation under 49 U.S.C. 44718.

§211.5 Responsibilities.

(a) Pursuant to subsection (e)(4) of section 358, the Deputy Secretary of Defense is designated as the senior officer. Only the senior officer may convey to the Secretary of Transportation a determination that a project filed with the Secretary of Transportation pursuant to 49 U.S.C. 44718 would result in an unacceptable risk to the national security of the United States.

(b) Pursuant to subsection (b)(1) of section 358, the Under Secretary of Defense for Acquisition, Technology, and Logistics is designated as the senior official. Only the senior official may provide to the senior officer a recommendation that the senior officer determine a project filed with the Secretary of Transportation pursuant to 49 U.S.C. 44718 would result in an unacceptable risk to the national security of the United States.

(c) Pursuant to subsection (e)(1) of section 358, the Deputy Under Secretary of Defense (Installations & Environment), in coordination with the Deputy Assistant Secretary of Defense (Readiness) and the Principal Deputy Director, Operational Test and Evaluation, shall review a proper application for a project filed pursuant to 49 U.S.C. 44718 and received from the Secretary